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Sorenson, Ofc. Sandoval and Ofc. Doolittle

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

JOSE DECASTRO,

Plaintiff,

vs.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT; STATE OF NEVADA;
BRANDEN BOURQUE; JASON TORREY;
C. DINGLE; B. SORENSON; JESSE
SANDOVAL; OFFICER DOOLITTLE and
DOES 1 to 50, inclusive,

Defendants.

Case Number:
2:23-cv-00580-APG-EJY

**DEFENDANTS LVMPD, OFC.
TORREY, OFC. BOURQUE, OFC.
DINGLE, OFC. SORENSON, OFC.
SANDOVAL AND OFC. DOOLITTLE'S
MOTION TO STAY DISCOVERY**

Defendants Las Vegas Metropolitan Police Department (“LVMPD”), Ofc. Torrey, Ofc. Bourque, Ofc. Dingle, Ofc. Sorenson, Ofc. Sandoval and Ofc. Doolittle (“LVMPD Defendants”), by and through their attorneys of record, Marquis Aurbach, hereby file their Motion to Stay Discovery. This Motion is made and based upon the pleadings and papers on file herein, the Memorandum of Points & Authorities attached hereto, and any oral argument allowed by counsel at the time of hearing.

MEMORANDUM OF POINTS & AUTHORITIES

I. INTRODUCTION

Plaintiff Jose DeCastro (“DeCastro”) is suing LVMPD, several LVMPD officers, and the State of Nevada claiming he was falsely arrested and the officers used excessive force. The LVMPD Defendants have filed a motion for partial dismissal (ECF No. 15). The

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1 criminal charges stemming from DeCastro's arrest are still active. This Motion requests this
2 Court stay discovery in this matter until DeCastro's criminal charges are resolved.

3 Pursuant to the "favorable termination" rule set forth by the United States Supreme
4 Court in *Heck v. Humphrey*, 512 U.S. 477 (1994), if DeCastro is convicted of the criminal
5 charges, he may be barred from pursuing most or all of his claims asserted in this action.
6 Additionally, the factors provided by the Ninth Circuit in *Keating v. Office of Thrift*
7 *Supervision*, 45 F.3d 322 (9th Cir. 1995) militate in favor of a stay under these
8 circumstances. Lastly, the *Younger*¹ abstention doctrine requires that this Court stay these
9 civil proceedings while the state court criminal proceedings are ongoing. Accordingly, this
10 Court should stay the instant action during the pendency of the state court criminal
11 proceedings in connection with the same nucleus of facts giving rise to DeCastro's claims in
12 the instant case.

13 **II. FACTS**

14 **A. THE SUBJECT INCIDENT**

15 On March 15, 2023, at approximately 4:30 p.m., Ofc. Bourque was conducting a
16 traffic stop of a silver Hyundai Elantra. (ECF No. 13 at ¶20). DeCastro approached the
17 traffic stop and began recording and talking to the traffic detainee. (ECF No. 13 at ¶21). At
18 the time DeCastro approached the traffic stop, Ofc. Bourque was sitting in his LVMPD
19 vehicle. (ECF No. 13 at ¶20).

20 Upon noticing DeCastro interacting with the subject of the traffic stop, Ofc. Bourque
21 exited his police vehicle, got DeCastro's attention, and told him to back up. (ECF No. 13 at
22 ¶22). DeCastro moved five feet. (ECF No. 13 at ¶22). Ofc. Bourque again told DeCastro to
23 back up from the traffic stop, at which time DeCastro began asserting his rights to record the
24 interaction. (ECF No. 13 at ¶23). Ofc. Bourque warned DeCastro he would detain DeCastro
25 for obstructing if he did not move further away from the detainee. (ECF No. 13 at ¶23).
26 DeCastro insisted he had no obligation to back up because of his status as a member of the
27

28 ¹ *Younger v. Harris*, 401 U.S. 37 (1971).

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1 press and his right to record police interactions. (ECF No. 13 at ¶¶ 23-24). When DeCastro
2 ignored Ofc. Bourque's commands to move back ten feet, Ofc. Bourque told DeCastro he
3 was being detained. (ECF No. 13 at ¶24). Ofc. Bourque told the traffic detainee she was free
4 to go. (ECF No. 13 at ¶25).

5 When Ofc. Bourque attempted to detain DeCastro, DeCastro refused to comply.
6 (ECF No. 13 at ¶¶ 25-26). DeCastro asked for a supervisor and walked to Ofc. Bourque's
7 LVMPD vehicle, at which time Ofc. Bourque informed DeCastro he was being arrested for
8 obstruction. (ECF No. 13 at ¶¶ 26). DeCastro made Ofc. Bourque aware of a prior shoulder
9 injury, and Ofc. Bourque placed DeCastro in two pairs of handcuffs to adhere to his medical
10 needs. (ECF No. 13 at ¶¶ 27).

11 DeCastro then threatened to sue the officers at the scene. (ECF No. 13 at ¶¶ 33).
12 DeCastro further alleges he was patted down several times, and during the final pat-down,
13 an officer struck DeCastro in the groin with a closed fist. (ECF No. 13 at ¶ 38). Eventually,
14 Defendant Erland Jason Torrey ("Sgt. Torrey") arrived at the scene. (ECF No. 13 at ¶ 35).
15 Sgt. Torrey authorized the officers' behavior as being within LVMPD policy, and said
16 DeCastro should be arrested. As noted in Ofc. Bourque's report and affirmed by Sgt. Torrey,
17 the reasons why DeCastro was arrested was for engaging with a detained driver, refusing to
18 give an officer reasonable space to work, and refusing to obey lawful commands after being
19 advised he was being detained. (ECF No. 13 at ¶¶ 44).

20 DeCastro was subsequently arrested for obstructing a traffic stop and transported to
21 CCDC. The criminal charges against DeCastro are still pending and active in Las Vegas
22 Justice Court. (*See* DeCastro Las Vegas Justice Court Criminal Docket, attached as **Exhibit**
23 **A**).

24 **B. PROCEDURAL HISTORY**

25 On April 17, 2023, DeCastro filed this lawsuit asserting several causes of action
26 based upon his being arrested on March 15, 2023. (ECF No. 2). DeCastro amended the
27 Complaint on May 7, 2023. (ECF No. 13). The gist of DeCastro's lawsuit is he was falsely
28 arrested and the officers used excessive force. Despite DeCastro's filing of the instant civil

1 action, DeCastro is currently undergoing state criminal proceedings in Las Vegas Justice
2 Court (Case No. 23-cr-013015) in connection with the incident that forms the basis for
3 DeCastro's claims. *See* Ex. A.

4 **III. LEGAL STANDARDS**

5 The district court "has broad discretion to stay proceedings as an incident to its
6 power to control its own docket." *Clinton v. Jones*, 520 U.S. 681, 706 (1997) (*citing Landis*
7 *v. North American Co.*, 299 U.S. 248, 254 (1936)). A stay is discretionary and the "party
8 requesting a stay bears the burden of showing that the circumstances justify an exercise of
9 that discretion." *Nken v. Holder*, 556 U.S. 418, 433-34 (2009).

10 **A. *KEATING* FACTORS**

11 When a civil plaintiff brings claims under § 1983 that are "related to rulings that will
12 likely be made in a pending or anticipated criminal trial," it is "common practice" for the
13 court "to stay the civil action until the criminal case or the likelihood of a criminal case is
14 ended." *Wallace v. Kato*, 549 U.S. 384, 393-94 (2007); *see also Fed. Saving & Loan Ins.*
15 *Corp. v. Molinaro*, 889 F.2d 899, 902 (9th Cir. 1989). The decision whether to stay civil
16 proceedings in the face of a parallel criminal proceeding should be made "in light of the
17 particular circumstances and competing interests involved in the case." *Federal Sav. & Loan*
18 *Ins. Corp. v. Molinaro*, 889 F.2d 899, 902 (9th Cir.1989).

19 When determining whether a stay is appropriate, courts look to whether the criminal
20 defendant's Fifth Amendment rights may be implicated by the civil proceedings. *See*
21 *Keating v. Office of Thrift Supervision*, 45 F.3d 322 at 324 (*citing Molinaro*, 889 F.2d at
22 902). Courts also consider (1) the interest of the plaintiff in proceeding with the litigation
23 and the potential prejudice to the plaintiff of a delay; (2) the burden which any particular
24 aspect of the proceedings may impose on defendants; (3) the convenience of the court and
25 the efficient use of judicial resources; (4) the interests of third parties; and (5) the interests of
26 the public. *Id.* at 324-25.

27 **B. *HECK* STANDARDS**

28 In order to recover damages for allegedly unconstitutional conviction or

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1 imprisonment, or for other harm caused by actions whose unlawfulness would render a
2 conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence
3 has been reversed on direct appeal, expunged by executive order, declared invalid by a state
4 tribunal authorized to make such determination, or called into question by a federal court's
5 issuance of a writ of habeas corpus, 28 U.S.C. § 2254. *Heck v. Humphrey*, 512 U.S. 477,
6 486-87 (1994). A claim for damages bearing that relationship to a conviction or sentence
7 that has not been so invalidated is not cognizable under § 1983. *Id.*

8 The question of whether a § 1983 action is barred by *Heck* is more difficult to
9 answer where the plaintiff is facing charges of resisting arrest or similar conduct arising
10 from the same incident, he is claiming excessive force, or if the plaintiff is alleging false
11 arrest or a similar claim. *See Wallace v. Kato*, 549 U.S. 384, 393–94 (2007). In such a
12 situation, a stay may be appropriate until such time as the underlying criminal proceedings
13 are concluded, at which time the court would be in a better position to evaluate whether the
14 § 1983 action would impugn any conviction resulting therefrom. *See id.*

15 C. YOUNGER ABSTENTION

16 Absent extraordinary circumstances, federal courts may not interfere with ongoing
17 state criminal proceedings. *See Younger v. Harris*, 401 U.S. 37, 43–54 (1971); *Sprint*
18 *Communications, Inc. v. Jacobs*, 571 U.S. 69, 77 (2013). A court may consider *sua sponte*
19 whether *Younger* abstention should be invoked at any point in the litigation. *H.C. ex rel.*
20 *Gordon v. Koppel*, 203 F.3d 610, 613 (9th Cir. 2000). Abstention is proper regardless of
21 whether the applicant seeks declaratory relief, injunctive relief, or damages. *See Mann v.*
22 *Jett*, 781 F.2d 1448, 1449 (9th Cir. 1986) (“When a state criminal prosecution has begun, the
23 *Younger* rule directly bars a declaratory judgment action” as well as a section 1983 action
24 for declaratory relief and damages “where such an action would have a substantially
25 disruptive effect upon ongoing state criminal proceedings.”); *Gilbertson v. Albright*, 381
26 F.3d 965, 984 (9th Cir. 2004) (*en banc*) (*Younger* abstention applies to actions for damages
27 as it does to declaratory and injunctive relief).

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1 A court may apply a stay under *Younger* when: “(1) the state court proceedings are
2 ongoing; (2) the proceedings implicate important state interests; and (3) the state
3 proceedings provide an adequate opportunity to raise the constitutional claims.” *Escobar v.*
4 *LASD Male Doe*, No. CV-17-7352-DSF (SP), 2017 WL 7050642, at *2 (C.D. Cal. Nov. 30,
5 2017) (citing *Middlesex Cty. Ethics Comm. v. Garden State Bar Ass’n*, 457 U.S. 423
6 (1982)).

7 **IV. LEGAL ARGUMENT**

8 **A. THE *KEATING* FACTORS FAVOR A STAY.**

9 Here, the instant civil rights action implicates DeCastro’s Fifth Amendment rights.
10 The facts and circumstances underlying DeCastro’s criminal prosecution overlaps with the
11 civil rights claims at issue in this case. Both cases involve the March 15, 2023 incident
12 between DeCastro and the Defendant officers. Thus, if this case proceeds, the LVMPD
13 Defendants will seek discovery from DeCastro, and he will be required to respond under
14 oath. The discovery will involve DeCastro’s alleged criminal actions on March 15, 2023.
15 Thus, there exists a substantial risk of prejudice to DeCastro’s Fifth Amendment rights if the
16 case is not stayed. Furthermore, if DeCastro invokes his Fifth Amendment rights in the
17 context of this litigation, it may impede the LVMPD Defendants’ discovery. *Jones v. Conte*,
18 No. C045312S1, 2005 WL 1287017, at *1 (N.D. Apr. 19, 2005) (finding that a stay of the
19 civil case involving defendant in criminal action was appropriate “because [i]f discovery
20 moves forward, [the] defendant will be faced with the difficult choice between asserting
21 [his] right against self-incrimination, thereby inviting prejudice in the civil case, or waiving
22 those rights, thereby courting liability in the civil case.”) (internal quotations and citation
23 omitted).

24 Moreover, the other *Keating* factors also support a stay. Any prejudice to DeCastro is
25 minimal given that both proceedings involve similar facts and witnesses, and it is unlikely
26 evidence will be lost or memories will fade with the passage of time during a stay.
27 Additionally, the public interest weighs in favor of a stay because “[t]he public has an
28 interest in ‘ensuring that the criminal process is not subverted’ by ongoing civil cases.”

1 *Douglas v. United States*, No. C 03-4518, 2006 WL 2038375 at *6 (N.D. Cal. July 17,
2 2006).

3 Based on the foregoing, the LVMPD Defendants have met their burden of
4 establishing the circumstances in this case justify the Court's exercise of its discretion to
5 stay the instant case pending the resolution of the state criminal proceedings against
6 DeCastro.

7 **B. HECK SUGGESTS THAT A STAY IS APPROPRIATE HERE.**

8 If a stay is not granted, the defenses available to the LVMPD Defendants may be
9 wrongfully limited. If the Court in the criminal action considers DeCastro's factual
10 allegations regarding the March 15, 2023 incident, such findings may be binding in this
11 Court. Until the criminal proceedings are resolved, it is unclear whether certain defenses are
12 available, such as a bar against some or all of DeCastro's claims pursuant to *Heck*, or issue
13 preclusion. *See Wallace*, 549 U.S. at 393-94; *see also Vivas v. Cty. Of Riverside*, No. EDCV
14 15-1912-VAP (DTBx), 2016 WL 9001020 at *3 (C.D. Cal. Jan. 12, 2016) (staying excessive
15 force case where criminal prosecution for resisting arrest was pending).

16 Here, DeCastro faces charges of obstructing a public officer and resisting a public
17 officer pursuant to NRS § 197.190 and NRS § 199.280.3, respectively. *See Ex. A.*
18 Accordingly, as the Ninth Circuit noted in *Wallace*, the question of whether DeCastro's
19 §1983 action is barred by *Heck* is more difficult to answer in this case, where DeCastro is
20 facing charges of resisting arrest or similar conduct arising from the same incident he is
21 claiming excessive force. Accordingly, *Heck* and *Wallace* favor the imposition of a stay
22 because DeCastro's criminal action and the instant case involve the same set of facts, and
23 DeCastro's ability to maintain some or all of his § 1983 claims is contingent upon his
24 receiving a favorable disposition of the subject criminal charges.

25 **C. YOUNGER ABSTENTION REQUIRES THIS COURT STAY THE**
26 **CASE.**

27 Even if this Court determines a stay is not warranted under the former analysis, a
28 stay is warranted under *Younger*. Here, DeCastro's criminal case is ongoing and implicates

the State of Nevada's important interest in ensuring the integrity of its criminal justice system. *See Kelly v. Robinson*, 479 U.S. 36, 49 (1986) ("the States' interest in administering their criminal justice systems free from federal interference is one of the most powerful of the considerations that should influence a court in considering equitable types of relief.") Indeed, DeCastro may raise constitutional issues in the state proceedings. *See Pennzoil Co. v. Texaco*, 481 U.S. 1, 15 (1987) ("a federal court should assume that state procedures will afford an adequate remedy, in the absence of unambiguous authority to the contrary.") In addition, DeCastro is seeking damages in this civil action. Accordingly, it is clear that principles of judicial comity authorize the Court to stay this action until DeCastro's criminal proceedings have concluded.

V. CONCLUSION

Based on the foregoing, the LVMPD Defendants respectfully request the Court stay this civil action during the pendency of the state court criminal proceedings.

Dated this 6th day of July, 2023.

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By /s/ Craig R. Anderson

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **DEFENDANTS LVMPD, OFC. TORREY, OFC. BOURQUE, OFC. DINGLE, OFC. SORENSON, OFC. SANDOVAL AND OFC. DOOLITTLE'S MOTION TO STAY** with the Clerk of the Court for the United States District Court by using the court's CM/ECF system on the 6th day of July, 2023.

☒ I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

☒ I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third-party commercial carrier for delivery within 3 calendar days to the following non-CM/ECF participants:

Jose DeCastro
1258 Franklin Street
Santa Monica, CA 90404
Plaintiff Pro Se N/A

/s/ Sherri Mong
an employee of Marquis Aurbach

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Exhibit A

REGISTER OF ACTIONS**CASE No. 23-CR-013015****State of Nevada vs. DECASTRO, JOSE**§
§
§
§
§Case Type: **Misdemeanor CR**Date Filed: **03/15/2023**Location: **JC Department 8****PARTY INFORMATION****Defendant DECASTRO, JOSE****Lead Attorneys**
Michael Mee
Retained
702-308-6363(W)**State of Nevada State of Nevada****CHARGE INFORMATION****Charges: DECASTRO, JOSE**

1. False stmt to/obstruct pub off [52312]
2. Resist public officer [52990]

Statute
197.190
199.280.3

Level
Misdemeanor
Misdemeanor

Date
03/15/2023
03/15/2023
EVENTS & ORDERS OF THE COURT**OTHER EVENTS AND HEARINGS**

03/15/2023 **Original Track Assignment JC08**

03/15/2023 **Case Assignment Sent**
Case Assignment Sent

03/15/2023 **DA Request for Prosecution**
Request for Prosecution Sent to DA

03/29/2023 **Case Assignment Sent**
Case Assignment Sent

03/29/2023 **Citation Image**

03/29/2023 **Supplemental Documentation Submitted with Citation**

03/30/2023 **Media Request for Electronic Coverage**
of Court proceedings filed.

04/03/2023 **Media Request for Electronic Coverage Granted**

04/03/2023 **Order Regarding Media Request for Electronic Coverage Filed**

06/12/2023 **Notice of Appearance**
Notice of Appearance of Defense Counsel

06/13/2023 **Arraignment (8:00 AM) (Judicial Officer Zimmerman, Ann E.)**
NO BAIL POSTED
Result: Matter Heard

06/13/2023 **Counsel Confirms as Attorney of Record**
M. Mee, Esq.

06/13/2023 **Arraignment Completed**
Defense advised of Charges on Criminal Complaint, Waives Reading of Criminal Complaint

06/13/2023 **Discovery Given to Counsel in Open Court**

06/13/2023 **Early offer received in open court**
Continued for negotiations

06/13/2023 **Minute Order - Department 08**

06/27/2023 **Negotiations (8:00 AM) (Judicial Officer Zimmerman, Ann E.)**
NO BAIL POSTED
Result: Matter Heard

06/27/2023 **Defendant Rejected the State's Offer**

06/27/2023 **Plea of Not Guilty Entered**
by Defense

06/27/2023 **Minute Order - Department 08**

09/12/2023 **Bench Trial (9:30 AM) (Judicial Officer Zimmerman, Ann E.)**
No bail posted